

REMARKS

The Examiner has objected to Claims 1, 2, 4-12, 14-22, 24-30, 41, and 42 due to informalities. Applicant respectfully asserts that such objection has been avoided in view of the clarification made to independent Claims 1, 11, and 21.

Additionally, the Examiner has objected to Claims 32 and 34-40 due to informalities. More specifically, the Examiner has argued that “the scope of claim 31 includes the computer readable medium” and that “[t]herefore, any claim depending from claim 31, either directly or indirectly, should reference the medium as well as the program.” Applicant respectfully disagrees and notes that a “software supply controlling computer program,” as claimed by applicant in Claims 32 and 34-40, directly or indirectly refers to, and thereby references, a “software supply controlling computer program” claimed by applicant in independent Claim 31, where the “software supply controlling computer program” is “embodied on a tangible computer readable medium.”

Further, the Examiner has “adopt[ed]... definitions-under the broadest reasonable interpretation standard-in all his claim interpretations” for the terms ‘Install,’ “License/Licence,” and “Ticket.” Applicant disagrees and asserts that all of applicant’s claim language is to be read according to the plain and ordinary meaning thereof, in view of dictionary definitions, and in further view of the definitions provided in the specification.

Further still, the Examiner has argued that “applicant’s use of optional language (e.g. ‘if’ in claim 1) allows for the ‘if not’ option to read on the claim” and has further argued that “it is the Examiner’s opinion that these limitations do not distinguish the claim from the prior art.” Applicant respectfully disagrees. For example, with respect to independent Claim 1, applicant notes that applicant’s language is not limited to the “if not” option, but instead discloses “if said licence key is valid, then: (i) downloading said computer program product to said user computer; and (ii) installing said computer program product to be resident upon said user computer,” as claimed by applicant.

The Examiner has rejected Claims 1, 2, 4, 5, 8-12, 14, 15, 18-22, 24, 25, 28-32, 34, 35, and 38-41 under 35 U.S.C. §103(a) as being unpatentable over Ishibashi et al. (U.S. Patent No. 7,124,443). Applicant respectfully disagrees with such rejection.

With respect to independent Claims 1 and 11, the Examiner has relied on the “Contents Use Right Discrimination Card” and “Discriminating Data” elements of Figure 3 from the Ishibashi reference to make a prior art showing of applicant’s claimed “obtaining a license ticket bearing a license key.”

Applicant respectfully asserts that the excerpts relied on by the Examiner merely disclose a “content use rights discrimination card” onto which “is recorded the identifiers necessary to acquire the decoding key of the encrypted content” (Col. 9, lines 20-22, not specifically cited – emphasis added). Further, Ishibashi discloses that “[t]he user... sends the identification data recorded on the content use rights discrimination card [i.e., “discriminating data”] to the content use rights sale center” (Col. 10, lines 1-3, not specifically cited – emphasis added), and that “[i]f... the content use rights sale center 605 determines that content use rights is to be issued to the user, the decoding key is distributed to the user (Column 10, lines 14-17, not specifically cited – emphasis added).

However, merely disclosing that data from a content use rights discrimination card is sent from a user to a content use rights sale center, which determines whether content use rights should be issued to a user and distributes the decoding key to the user after the determination, fails to disclose “obtaining a license ticket bearing a license key” (emphasis added), as claimed by applicant. Distributing the decoding key to a user after the user sends the content use rights discrimination card to a content use rights sale center for a content use rights issuance determination does not disclose “a license ticket” that “bear[s] a licence key,” as claimed.

With respect to independent Claims 21 and 31, the Examiner has again relied on the “Contents Use Right Discrimination Card” and “Discriminating Data” elements of

Figure 3 from the Ishibashi reference to make a prior art showing of applicant's claimed "receiving a licence key input by a user at said user computer, said licence key being borne by a licence ticket obtained by a user" (see this or similar, but not necessarily identical language, in each of the aforementioned claims).

Applicant again notes that the excerpts relied on by the Examiner merely teaches that data from a content use rights discrimination card is sent from a user to a content use rights sale center, which determines whether content use rights should be issued to a user and distributes the decoding key to the user after the determination, which fails to disclose "receiving a licence key input by a user at said user computer, said licence key being borne by a licence ticket obtained by a user" (emphasis added), as claimed by applicant. Distributing the decoding key to a user after the user sends the content use rights discrimination card to a content use rights sale center for a content use rights issuance determination does not disclose "receiving a licence key input by a user at said user computer" where "said licence key [is] borne by a licence ticket obtained by a user" (emphasis added), as claimed.

With respect to independent Claims 1 and 11, the Examiner has relied on Col. 8, line 45 from the above reference to make a prior art showing of applicant's claimed "inputting at a user computer a download source computer address of a download source computer of a supplier of said computer program product." In addition, the Examiner has argued that "[t]he address has to be know[n] to the user computer in order to have the download initiated, therefore, it had to be inputted."

Applicant respectfully disagrees and asserts that the excerpt relied on by the Examiner merely discloses a "[a] content provider" which "suppl[ies] software content" (Col. 8, line 45). However, merely disclosing a content provider fails to teach "inputting at a user computer a download source computer address of a download source computer of a supplier of said computer program product" (emphasis added), as claimed by applicant. Nowhere in the above excerpt is a "download source computer address of a

download source computer of a supplier of said computer program product” taught that is “input at a user computer” (emphasis added), as specifically claimed.

In addition, it appears that the Examiner has relied on an inherency argument regarding the above emphasized claim limitations. In view of the arguments made hereinabove, any such inherency argument has been adequately rebutted, and a notice of allowance or a specific prior art showing of such claim features, in combination with the remaining claim elements is respectfully requested. (See MPEP 2112)

With respect to Claims 1 and 11, the Examiner has relied on an “Arrow from 601 to 605” in Figure 3 from the above reference to make a prior art showing of applicant’s claimed “transmitting said licence key from said user computer to said download source computer via said computer network connection.”

Applicant respectfully asserts and disagrees that the “Arrow from 601 to 605” in Figure 3 refers to “discriminating data.” Additionally, Ishibashi discloses that “[t]he user... sends the identification data recorded on the content use rights discrimination card [i.e., “discriminating data”] to the content use rights sale center” (Col. 10, lines 1-3, not specifically cited – emphasis added), and that “[i]f... the content use rights sale center 605 determines that content use rights is to be issued to the user, the decoding key is distributed to the user (Column 10, lines 14-17, not specifically cited – emphasis added)

However, merely disclosing that a user sends identification data to a content use rights sale center, which determines whether content use rights are to be issued and sends a decoding key to the user, as in Ishibashi, does not teach, and in fact *teaches away* from, “transmitting said licence key from said user computer to said download source computer via said computer network connection” (emphasis added), as claimed by applicant.

Further, with respect to Claims 21 and 31, the Examiner has relied on an “Arrow from 601 to 605” in Figure 3 from the above reference to make a prior art showing of applicant’s claimed “receiving a licence key input by a user at said user computer”

Applicant again respectfully notes that merely disclosing that a user sends identification data to a content use rights sale center, which determines whether content use rights are to be issued and sends a decoding key to the user, as in Ishibashi, does not teach, and in fact *teaches away* from, “receiving a licence key input by a user at said user computer” (emphasis added), as claimed by applicant.

Further still, with respect to the independent claims, the Examiner has relied on the following excerpt from the above reference to make a prior art showing of applicant’s claimed technique “wherein when said licence ticket is purchased a seller of said licence ticket transmits data indicating sale of said licence ticket to said supplier of said computer program product” (see this or similar, but not necessarily identical language).

“The content use rights sale center 605 manages the information pertinent to the issue content use rights discrimination card in its database and also manages data indicating whether or not a decoding key for the content associated with the content use rights discrimination card that is identified by the serial number has already been distributed. The content use rights sale center 605 determines whether or not the identification data, recorded on the content use rights discrimination card received from the user is authentic” (Column 10, lines 4-13 - emphasis added) .

Applicant respectfully points out that the above excerpt relied on by the Examiner merely discloses that a “content use rights sale center... manages the information pertinent to the issue content use rights discrimination card... and also manages data indicating whether or not a decoding key... has already been distributed” (emphasis added). Further, the excerpt discloses that “[t]he content use rights sale center... determines whether or not the identification data, recorded on the content use rights discrimination card received from the user is authentic” (emphasis added).

However, merely disclosing that a sale center manages information pertinent to the issue content use rights discrimination card and manages data indicating whether a decoding key has been distributed, in addition to teaching that the sale center determines whether identification data on the issue content use rights discrimination card is authentic, fails to disclose that “a seller of said licence ticket transmits data indicating sale of said licence ticket to said supplier of said computer program product,” much less a technique “wherein when said licence ticket is purchased a seller of said licence ticket transmits data indicating sale of said licence ticket to said supplier of said computer program product” (emphasis added), as claimed by applicant.

In addition, it appears that the Examiner has relied on an inherency argument regarding the above emphasized claim limitations. More specifically, the Examiner has argued that “[i]n order for the sale center 605 to know that the serial number has been distributed, it had to be reported by the seller.” Applicant respectfully disagrees and notes that, in view of the arguments made hereinabove, any such inherency argument has been adequately rebutted, and a notice of allowance or a specific prior art showing of such claim features, in combination with the remaining claim elements is respectfully requested. (See MPEP 2112)

Additionally, the Examiner has noted that “the provider 603 and the management center 605 [are shown] as separate servers” and has argued that “it would have been obvious to one of ordinary skill in the art... to have modified the teachings of Ishibashi to combine the two servers in order to make them integral (MPEP 2144.04), thus reducing the hardware and communications requirements.” Applicant respectfully disagrees and notes that it would not be obvious to one of ordinary skill in the art to modify the teachings of Ishibashi in the manner suggested by the Examiner.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable

expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claim 8 et al., the Examiner has relied on the following excerpt from the Ishibashi reference to make a prior art showing of applicant's claimed technique "wherein said licence key is hidden upon said licence ticket so as to be non-reversibly revealable by said user."

"...be sold apart from the content. The content use rights discrimination card again is sealed in a package so as not to be seen from outside or is designed as a scratch card" (Column 8, lines 65-67 - emphasis added).

Applicant respectfully asserts that the above reference excerpt teaches that a "content use rights discrimination card... is sealed in a package so as not to be seen from outside or is designed as a scratch card." Additionally, Ishibashi discloses that "the card having the identifier that attests to the content use rights... is the content use rights discrimination card" (Col. 8, lines 60-62, not specifically cited – emphasis added).

However, merely teaching that a content use rights discrimination card having an identifier that attests to the content use rights is sealed or designed as a scratch card, as in Ishibashi, fails to disclose a "licence key," much less a technique "wherein said licence key is hidden upon said licence ticket so as to be non-reversibly revealable by said user" (emphasis added), in the context claimed by applicant.

Additionally, with respect to dependent Claim 6 et al., the Examiner has rejected the same under 35 U.S.C. §103(a) as being unpatentable over Ishibashi in view of Official Notice. More specifically, with respect to dependent Claim 6 et al., the Examiner has simply dismissed the same under Official Notice. Specifically, the Examiner has stated that applicant's claimed language is "merely... sale by consignment," that "it is notoriously old and well known in the art to sell goods by consignment," and that "[t]herefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the teachings of Ishibashi to use consignment in order to reduce the risk on the part of the seller, which makes them more likely to carry the product."

Applicant respectfully disagrees. In particular, applicant notes that merely disclosing that a sale center manages information pertinent to the issue content use rights discrimination card and manages data indicating whether a decoding key has been distributed, in addition to teaching that the sale center determines whether identification data on the issue content use rights discrimination card is authentic, as in Ishibashi, fails to even *suggest* "charg[ing] said seller for a licence to use said computer program product," much less a technique "wherein receipt of said data indicating sale of said licence ticket triggers said supplier of said computer program product to charge said seller for a licence to use said computer program product" (emphasis added), in the context claimed by applicant.

Applicant thus formally requests a specific showing of the subject matter in ALL of the claims in any future action. Note excerpt from MPEP below.

"If the applicant traverses such an [Official Notice] assertion the examiner should cite a reference in support of his or her position." See MPEP 2144.03.

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above. Thus, a

notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claims 43-44 below, which are added for full consideration:

“wherein validating the licence key includes comparing the licence key with a list of valid licence keys” (see Claim 43); and

“wherein the download source computer address is printed on the licence ticket” (see Claim 44).

Again, a notice of allowance or a proper prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

To this end, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P490).

Respectfully submitted,
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